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Supreme Court, U.S.
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NO. 93 - 1375

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALAN GOLDSTEIN, PETITIONER

v.

THE UNITED STATES, DEFENDANT
and J. NEVIN WHITE LUMBER COMPANY
and CHICAGO TITLE INSURANCE COMPANY
OF MARYLAND,
THIRD PARTY DEFENDANTS, RESPONDENTS

BRIEF IN OPPOSITION

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19 pp

QUESTION PRESENTED FOR REVIEW

Whether a person whose tax deed to land was purchased at a tax sale without notice to the owner of the land is entitled to a portion of the damages in condemnation paid to the owner?

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TABLE OF AUTHORITIES

Statutes

Pennsylvania Real Estate Tax Sale Law, Act of July 10, 1980, P.L. 417, No. 98, Pa. Stat. Ann. tit. 72, §5860.602(e)(1) — 8, 14

Cases

Ali v. Montgomery County Tax Claim Bureau, 124 Pa. Commw. 557, 557 A.2d 35 (1989) — 15

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OPINIONS BELOW

The judgment order and opinion of the court of appeals are unpublished but are set forth in the petition. (Pet.App.11-13). The judgment and opinion of the United States Court of Claims are unpublished but are set forth in the petition. (Pet.App. 14-35).

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on November 10, 1993. (Pet.App. 11) The petition for a writ of certiorari was filed on January 26, 1994, but was rejected by the Clerk due to lack of conformity with this Court's rules. The petition was refiled with the Court on March 2, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Fifth Amendment to the United States Constitution which provides, in relevant part:

> . . . nor shall private property be taken for public use without just compensation.

U.S. Const. Amend. V

The case also involves The Pennsylvania Real Estate Tax Sales Law, Pa. Stat. Ann. tit. 72, §5860.602(e)(1), which provides:

> (e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows: (1) at least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage pre-

paid, to each owner as defined in this act.

Pa. Stat. Ann. tit.72, §5860.602(e)(1).

STATEMENT OF THE CASE

On June 20, 1986, the United States, in its acquisition of land for the Appalachian Trail, condemned 583.59 acres of land belonging to the J. Nevin White Lumber Company ("White")[1] in Dauphin County, Pennsylvania, ("the condemned land"). Included in the condemned land was a 141.686 acre tract of land in which the petitioner claims he has an ownership interest (the "disputed tract"). The petitioner claims that part of the compensation paid to White should have been paid to him.

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[1] J. Nevin White Lumber Company has no parent or subsidiary corporations.

White acquired the disputed tract in 1967 and is able to trace its chain of title back to Thomas Elder, who had conveyed his interest in the disputed tract in 1854.[2]

The petitioner claims his title to the disputed tract had its source in two tax sales conducted by Dauphin County, Pennsylvania taxing authorities in 1964 and 1985.

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[2] Thomas Elder conveyed title in 1854 to Lewis Heck. The Estate of Lewis Heck was partitioned and the premises awarded to his daughter Marianne H. Donaldson. In 1896, Donaldson conveyed the premises to J. Lewis Heck. In 1904, J. Lewis Heck conveyed the Tract to John Creswell, who conveyed the property to Harvey Creswell in 1906. In 1907, Harvey Creswell conveyed the property to Cora Zimmerman, and Zimmerman conveyed the property to Fay Bailey in 1916. In 1938, Bailey conveyed the tract to G. L. Bendigo, who conveyed it to W. L. Gaugler in 1947. In 1952, Gaugler conveyed the property to P. W. Fetterhoff, and Fetterhoff conveyed the tract to Fred N. Lyons by deed dated January 21, 1965. By deed Dated February 15, 1967, Lyons conveyed the tract to White.

For some inexplicable reason, the real estate tax records of Dauphin County indicated in 1964 that Thomas Elder was still the owner of the disputed tract, and that the real estate taxes payable on the disputed tract were delinquent.[3]

As a result of these administrative errors, in 1964 the Tax Claim Bureau of Dauphin County caused the disputed tract to be sold at a tax sale held pursuant to the Pennsylvania Real Estate Tax Sale Law, Pa. Stat. Ann. tit. 72, §5860.101 et seq. Notice of the 1964 tax sale was not given to the then-owner of the disputed tract, Fetterhoff, as required by the Real Estate Tax Sale Law, Pa. Stat. Ann. tit. 72, §5860.602. The Tax Claim Bureau apparently attempted to

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[3] As indicated in the preceding footnote, in 1964 the disputed tract was actually owned by one Fetterhoff, and the taxes billed to Fetterhoff were paid when due.

give notice to the long-deceased Thomas Elder, who had conveyed the disputed tract more than one hundred years before. At the 1964 tax sale a party named Coleman purchased the disputed tract.

Apparently, between 1964 and 1984 both Coleman and the true owner of the disputed tract paid real estate taxes on the disputed tract. However, eventually Coleman failed to pay the taxes billed to him for the disputed tract and the property was again sold at a tax sale conducted by the Tax Claim Bureau of Dauphin County in 1985. This time the petitioner purchased the disputed tract for $170.91. Once again, however, the Tax Claim Bureau of Dauphin County failed to give the statutory notice to the true owner

of the disputed tract, White.[4]

White had no reason to believe its property was being exposed to a tax sale because it had paid all of the taxes which had been billed to it. Further, during the entire period of White's ownership of the disputed tract, no other party attempted to take possession of the property.

On cross motions for summary judgment, the United States Claims Court found that the tax sales to Coleman and the petitioner were void under Pennsylvania law for failure

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[4]. Fetterhoff conveyed the disputed tract to Lyons in 1965 who, in turn, conveyed the disputed tract to White in 1967. The petitioner has not claimed sole ownership of the disputed tract, but says that he owns an undivided one-third interest along with White and a third party named Johnston. According to the petitioner, the disputed tract was assessed for taxes under three separate tax parcel numbers due to administrative error.

to comply with the notice-to-owner provisions of the Pennsylvania Real Estate Tax Law. As a result, the petitioner had no property interest in the disputed tract and was not entitled to a portion of the condemnation award. On appeal, the Court of Appeals for the Federal Circuit affirmed.

SUMMARY OF ARGUMENT

There are no significant constitutional or statutory issues raised in this case which warrant consideration by this Court. The petitioner's claim is premised on his supposed ownership of a tract of land in Dauphin County, Pennsylvania, which he allegedly purchased at a tax sale. The trial court correctly held that the petitioner's tax deed was void because the tax sale was held without notice to the respondent, the true owner of the land. Consequently, the

petitioner had no property interest that entitled him to a portion of the condemnation proceeds.

ARGUMENT

There are no special or important reasons for this Court to grant a writ of certiorari to hear this case. The petitioner's claimed title to the disputed tract has been held void because he purchased the property at a tax sale conducted under procedures that have been held fatally defective under the Pennsylvania Real Estate Tax Sale Law.

This case involves a decision of a court of appeals applying Pennsylvania law which is not in conflict with a decision of another United States Court of Appeals on the same matter. This case does not otherwise call for the exercise of this Court's power of supervision.

The petitioner has presented no evidence of a defect in the title to the disputed tract held by White, which is able to trace its chain of title back to 1854. Instead, the petitioner has argued throughout this case that he has acquired a right to a portion of the disputed tract from an independent source, a tax sale instituted in 1964 which, because of an administrative error by the Dauphin County Tax Claim Bureau, purported to include a portion of White's property in the sale. The petitioner claims that he acquired the disputed tract when it was resold in 1985 at yet another tax sale.[5]

The petitioner admits that the 1964 tax sale was defective for failure to give notice to the actual owner of the property at

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[5] The tax deed was issued to the petitioner on February 4, 1986.

the time, as required by the Pennsylvania Real Estate Tax Sale Law, Pa. Stat. Ann. tit. 72, §5860.602(e)(1). He also concedes that no notice of the 1985 sale was given to White, the owner of the property in 1985, again in violation of the statute. Even though the sales were fatally defective for lack of proper notice, the petitioner claims it was incumbent on the successor to the owner of the property sold in 1964 to bring an action to set aside that sale.

The thrust of his argument is that the 1964 sale constituted a "judicial sale" under Pennsylvania law, and a statute of limitations enacted in 1982 relating to judicial sales effectively bars White from challenging the sale.

The petitioner's argument that the statute of limitations should be applied is

premised on his earlier argument (rejected by the trial court) that a defective tax sale is voidable, not void. The trial court carefully reviewed the Pennsylvania law relating to tax sales and correctly concluded that sales where all of the notice requirements were not observed are void, not voidable. See, e.g., Ali v. Montgomery County Tax Claim Bureau, 124 Pa. Commw. 557, 557 A.2d 35 (1989).

In fact, Pennsylvania has held that even if there were no statutory notice provisions, due process requirements would require notice "such as would likely inform the taxpayer of the intended sale of the premises." In Re: Upset Tax Sale, 147 Pa. Commw. 52, 606 A.2d 1255 (1992); Lapp v. County of Chester, 67 Pa. Commw. 86, 445 A.2d 1356 (1982). Pennsylvania law is understandably devoid of any authority which

would require a property owner to institute an action to set aside a sale of which he had no notice in response to a new statute of limitations which was enacted some 18 years after the alleged tax sale.

Further, the Pennsylvania Real Estate Tax Sale Law recognizes a difference between a "tax sale" and a "judicial sale." While earlier provisions of the Tax Sale Law referred to "judicial sales" in establishing the procedures for the selling of properties of delinquent tax payers, the legislature corrected this misleading language by an amendment to the Tax Sale Law in 1980.[6]

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[6] It is pertinent to note at this point that the sale to the petitioner in 1985 occurred after the language on which the petitioner rests his case was excised from the Real Estate Tax Sale Law and consequently no claim can be made that a statute of limitations is applicable to contesting the second sale.

The petitioner illogically argues that the sale in 1964 was a judicial sale even though the Pennsylvania courts have never given upset sales that characterization and even though the Pennsylvania General Assembly removed this language from the Real Estate Tax Sale Law in 1980.

The petitioner's claim that he was entitled to share a portion of the condemnation award required that he establish that he has a recognized property interest within the meaning of the Fifth Amendment. Since, under Pennsylvania law, petitioner's tax deed was void, he was unable to establish that he had a valid property interest that would entitle him to compensation under the Fifth Amendment. Accordingly, the trial court property dismissed the petitioner's complaint, and the affirmation of the Court

of Appeals was correct both in law and in fact.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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